

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**



JOHN BANCHS RIVERA,

Petitioner,

v.

DECISION AND ORDER
08-CV-6037L

ROBERT DENNISON,

Respondent.

Petitioner, John Banchs Rivera ("Rivera"), filed a petition pursuant to 28 U.S.C. § 2254 seeking habeas corpus relief. In the petition, Rivera contended that the New York State Parole Board's denial of his application for parole violated his constitutional rights.

On June 28, 2008 (Dkt. #10), respondent filed a motion to dismiss the petition on two grounds: that Rivera failed to exhaust the claim in State Court and that the petition is now moot since petitioner was granted parole in a subsequent proceeding before the Parole Board and is now no longer in custody. It appears that Rivera was released on May 12, 2008.

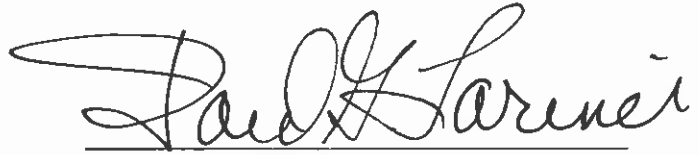
The petition must be dismissed. First of all, Rivera has not responded to the motion to dismiss and therefore the motion stands unopposed. It does appear from respondent's papers that Rivera failed to exhaust his administrative remedies upon his first denial of parole and now, there is no case or controversy before this Court because Rivera has now been granted parole and is no longer in custody. Therefore, this petition is **moot**.

CONCLUSION

The petition for habeas corpus relief pursuant to 28 U.S.C. § 2254 is dismissed.

I decline to issue a certificate of appealability because petitioner has failed to make a substantial showing of a constitutional violation.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is fluid and cursive, with a large initial "D" and "L".

DAVID G. LARIMER
United States District Court Judge

Dated: October 2, 2009
Rochester, New York